

Dissent of Commissioner Dian M. Grueneich Verizon/MCI Merger

Prior to being appointed a Commissioner at the California PUC, I spent 20-plus years practicing law, including many cases before this Commission. While I was rarely certain about the outcome of a proceeding, I almost always felt that my clients and I had been given a fair and appropriate opportunity to present our case. A hallmark of that fairness was that, in cases involving ratepayer dollars, we had the opportunity for evidentiary hearings and the right of cross-examination under oath.

When this Commission began its review of the merger cases, it concluded that for both the SBC and the Verizon cases evidentiary hearings would be needed, thus providing interested parties with the basic right to an evidentiary hearing and cross-examination. The Assigned Commissioner unilaterally took away that right, failed to consult with her fellow Commissioners in overriding our decision, and refused to restore it despite the protestations of parties.

Earlier this month I held an all party meeting and specifically asked parties about the type of information that had been produced during evidentiary hearings in the SBC merger case and the impact of the failure to uphold our decision requiring evidentiary hearings. Contrary to Commissioner Kennedy, there were material facts at issue.

I am convinced that the elimination of the evidentiary hearings creates a fundamental impediment to the legitimacy of our decision and is an abrogation of due process rights that I will not and cannot condone.

In preparation for our long awaited restoration of the Consumer Bill of Rights and Rules, I have been reading the various Commission decisions on the CBOR. I am struck by the discrepancy in arguments that the failure to hold evidentiary hearings on the CBOR was a fundamental failure of due process in that case; but the lack of evidentiary hearings in this case, where there are clear factual disputes, is of no regard.

This Commission is about to approve a merger between the nation's second largest incumbent local exchange company and its second largest competitive local exchange company. We propose to do this without providing the opposition an opportunity to present its arguments in front of an administrative law judge, cross examine other witnesses, and be able to test the facts. The lack of hearings – while expeditiously moving the case through the process – may subject this Commission to petitions for rehearing and judicial review.

During my all party meeting, when I asked parties to discuss the absence of hearings in the Verizon/MCI merger, both sides presented compelling arguments. But as an attorney, I kept coming back to my belief that cross examination is essential for testing the facts in all cases.

While the lack of hearings is my biggest concern with this case, I am also disturbed by the inconsistency of the merger conditions when comparing this decision to the Peevey/Kennedy alternate in the SBC/AT&T merger proceeding. While very similar, the two decisions should be near mirror images in regard to the conditions. For example, while I believe that Verizon has been very active in providing its non-English speaking

customers with materials in the appropriate language, the continuation of this activity should be a condition of approval – as it is in the SBC/AT&T alternate decision.

I believe that the only proper course of action for this Commission is to remand this case and allow the opportunity for formal evidentiary hearings and cross-examination. Unlike the SBC/AT&T, other states are still reviewing the Verizon/MCI merger so a remand by us today will still be in line with the schedule of other states for the Verizon merger.

For these reasons, I will vote against the approval of the merger of Verizon and MCI.

I do believe that the merger should be approved. However, as a Commissioner I have a legal and ethical obligation to allow parties basic due process rights and thus I cannot support a vote today that overrides this Commission's prior determination that evidentiary hearings were both appropriate and required.

Dated November 21, 2005, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich
Commissioner